

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN SENATE APRIL 21, 1998

AMENDED IN SENATE MARCH 17, 1998

SENATE BILL

No. 1768

**Introduced by Senator Kopp
(Coauthors: Senators McPherson and Rainey)**

February 18, 1998

An act to amend, *repeal, and add* Section 2033.5 of the Code of Civil Procedure, and to amend ~~Sections 1202.4, 1214, and 11177.2~~ of Section 11177.2 of, and to amend, *repeal, and add* Sections 987, 1202.4, and 1214 of, the Penal Code, relating to criminal restitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1768, as amended, Kopp. Criminal restitution: disclosure of financial information.

(1) Under existing law, a person convicted of a crime is required to make restitution to any victim in the amount of the economic losses suffered by a victim as a result of the criminal conduct. Under existing law, the victim may enforce the restitution order as a civil money judgment, and may obtain access to the criminal defendant's financial records and information regarding his or her assets. Additionally, costs incurred under this existing procedure by the victim in attempting to collect under the restitution order are recoverable from the criminal defendant.

This bill would ~~provide that prior to the entry of any restitution order, the sentencing court would be required to~~

~~have received a financial statement submitted by the defendant that discloses~~ *require the defendant, in any case in which a restitution order is entered, to prepare and file a disclosure identifying all assets owned or controlled by the defendant as of the date on which the defendant was arrested, as well as other information relating to the defendant's financial resources. Under the bill the criminal defendant would not be permitted to be admitted to probation or be conditionally sentenced unless he or she made the disclosure required under these provisions, and a failure to make the disclosure would be required to be considered by the court* *This financial disclosure would be available to the victim. The bill also would authorize the victim to access confidential financial information filed by the defendant for purposes of determining his or her ability to employ defense counsel, when the defendant fails to file the financial disclosure required by these provisions.*

The bill would authorize the court to consider the defendant's unreasonable failure to make the disclosure as a circumstance in aggravation of the crime for purposes of imposing the sentence, and a factor indicating that the interests of justice would not be served by admitting the defendant to probation, conditionally sentencing the defendant, or imposing less than the maximum fine and sentence fixed by law. The bill would also make it a misdemeanor for any defendant to willfully state, on the required financial disclosure form, any material matter that he or she knows to be false. The bill would provide that these provisions shall become operative on January 1, 2000, unless an extension is granted by the Judicial Council, as specified. By creating a new crime, this bill would impose a state-mandated local program.

The bill also would require the Judicial Council to develop and approve form interrogatories for the use of the victim in seeking to collect under the criminal restitution order and a form for the financial statement and the information required to be disclosed on it pursuant to these provisions. The bill would provide that these provisions shall become operative on January 1, 2000.



(2) Existing law prohibits an inmate from being released on parole to reside in any receiving state if the parolee is subject to an unsatisfied order of restitution to a victim within the sending state with certain exceptions.

This bill would make technical changes to these provisions for purposes of clarification and would state that those provisions may not be construed to allow the reduction or waiver of a restitution order or fine.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2033.5 of the Code of Civil
2 ~~Procedure is amended to read:~~ *Procedure is amended to*
3 *read:*

4 2033.5. The Judicial Council shall develop and
5 approve official form interrogatories and requests for
6 admission of the genuineness of any relevant documents
7 or of the truth of any relevant matters of fact in any civil
8 action in a state court based on personal injury, property
9 damage, wrongful death, unlawful detainer, breach of
10 contract, family law, or fraud. Use of the approved form
11 interrogatories and requests for admission shall be
12 optional.

13 In developing the form interrogatories and requests for
14 admission required by this section, the Judicial Council
15 shall consult with a representative advisory committee
16 which shall include, but not be limited to, representatives
17 of the plaintiff's bar, the defense bar, the public interest
18 bar, court administrators, and the public. The form
19 interrogatories and requests for admission shall be
20 drafted in nontechnical language and shall be made



1 available through the office of the clerk of the
2 appropriate trial court.

3 The Judicial Council also shall promulgate any
4 necessary rules to govern the use of the form
5 interrogatories and requests for admission.

6 *This section shall remain in effect only until January 1,*
7 *2000, and as of that date is repealed, unless a later enacted*
8 *statute, that is enacted before January 1, 2000, deletes or*
9 *extends that date.*

10 *SEC. 2. Section 2033.5 is added to the Code of Civil*
11 *Procedure, to read:*

12 2033.5. (a) The Judicial Council shall develop and
13 approve official form interrogatories and requests for
14 admission of the genuineness of any relevant documents
15 or of the truth of any relevant matters of fact in any civil
16 action in a state court based on personal injury, property
17 damage, wrongful death, unlawful detainer, breach of
18 contract, family law, or fraud. Use of the approved form
19 interrogatories and requests for admission shall be
20 optional.

21 (b) In developing the form interrogatories and
22 requests for admission required by this section, the
23 Judicial Council shall consult with a representative
24 advisory committee which shall include, but not be
25 limited to, representatives of the plaintiff's bar, the
26 defense bar, the public interest bar, court administrators,
27 and the public. The form interrogatories and requests for
28 admission shall be drafted in nontechnical language and
29 shall be made available through the office of the clerk of
30 the appropriate trial court.

31 (c) The Judicial Council also shall promulgate any
32 necessary rules to govern the use of the form
33 interrogatories and requests for admission.

34 (d) The Judicial Council shall develop and approve
35 official form interrogatories for use by a victim who has
36 not received complete payment of a restitution order
37 made pursuant to Section 1202.4 of the Penal Code.

38 (e) Notwithstanding whether a victim initiates or
39 maintains an action to satisfy the unpaid restitution order,
40 a victim may propound the form interrogatories



1 approved pursuant to this section once each calendar
2 year. The defendant subject to the restitution order shall,
3 in responding to the interrogatories propounded, provide
4 current information regarding the nature, extent, and
5 location of any assets, income, and liabilities in which the
6 defendant claims a present or future interest.

7 *(f) This section shall become operative on January 1,*
8 *2000.*

9 ~~SEC. 2. Section 1202.4 of the Penal Code is amended~~
10 ~~to read:~~

11 *SEC. 3. Section 987 of the Penal Code is amended to*
12 *read:*

13 987. (a) In a noncapital case, if the defendant
14 appears for arraignment without counsel, he or she shall
15 be informed by the court that it is his or her right to have
16 counsel before being arraigned, and shall be asked if he
17 or she desires the assistance of counsel. If he or she desires
18 and is unable to employ counsel the court shall assign
19 counsel to defend him or her.

20 (b) In a capital case, if the defendant appears for
21 arraignment without counsel, the court shall inform him
22 or her that he or she shall be represented by counsel at all
23 stages of the preliminary and trial proceedings and that
24 the representation is at his or her expense if he or she is
25 able to employ counsel or at public expense if he or she
26 is unable to employ counsel, inquire of him or her
27 whether he or she is able to employ counsel and, if so,
28 whether he or she desires to employ counsel of his or her
29 choice or to have counsel assigned, and allow him or her
30 a reasonable time to send for his or her chosen or assigned
31 counsel. If the defendant is unable to employ counsel, the
32 court shall assign counsel to defend him or her. If the
33 defendant is able to employ counsel and either refuses to
34 employ counsel or appears without counsel after having
35 had a reasonable time to employ counsel, the court shall
36 assign counsel.

37 The court shall at the first opportunity inform the
38 defendant's trial counsel, whether retained by the
39 defendant or court-appointed, of the additional duties



1 imposed upon trial counsel in any capital case as set forth
2 in paragraph (1) of subdivision (b) of Section 1240.1.

3 (c) In order to assist the court in determining whether
4 a defendant is able to employ counsel in any case, the
5 court may require a defendant to file a financial
6 statement or other financial information under penalty of
7 perjury with the court or, in its discretion, order a
8 defendant to appear before a county officer designated
9 by the court to make an inquiry into the ability of the
10 defendant to employ his or her own counsel. If a county
11 officer is designated, the county officer shall provide to
12 the court a written recommendation and the reason or
13 reasons in support of the recommendation. The
14 determination by the court shall be made on the record.
15 The financial statement or other financial information
16 obtained from the defendant shall be confidential and
17 privileged and shall not be admissible in evidence in any
18 criminal proceeding except the prosecution of an alleged
19 offense of perjury based upon false material contained in
20 the financial statement. The financial statement shall be
21 made available to the prosecution only for purposes of
22 investigation of an alleged offense of perjury based upon
23 false material contained in the financial statement at the
24 conclusion of the proceedings for which the financial
25 statement was required to be submitted. The financial
26 statement and other financial information obtained from
27 the defendant shall not be confidential and privileged in
28 a proceeding under Section 987.8.

29 (d) In a capital case, the court may appoint an
30 additional attorney as a cocounsel upon a written request
31 of the first attorney appointed. The request shall be
32 supported by an affidavit of the first attorney setting forth
33 in detail the reasons why a second attorney should be
34 appointed. Any affidavit filed with the court shall be
35 confidential and privileged. The court shall appoint a
36 second attorney when it is convinced by the reasons
37 stated in the affidavit that the appointment is necessary
38 to provide the defendant with effective representation.
39 If the request is denied, the court shall state on the record
40 its reasons for denial of the request.



1 (e) This section shall remain in effect only until January
2 1, 2000, and as of that date is repealed, unless a later
3 enacted statute, that is enacted before January 1, 2000,
4 deletes or extends that date.

5 SEC. 4. Section 987 is added to the Penal Code, to
6 read:

7 987. (a) In a noncapital case, if the defendant
8 appears for arraignment without counsel, he or she shall
9 be informed by the court that it is his or her right to have
10 counsel before being arraigned, and shall be asked if he
11 or she desires the assistance of counsel. If he or she desires
12 and is unable to employ counsel the court shall assign
13 counsel to defend him or her.

14 (b) In a capital case, if the defendant appears for
15 arraignment without counsel, the court shall inform him
16 or her that he or she shall be represented by counsel at all
17 stages of the preliminary and trial proceedings and that
18 the representation is at his or her expense if he or she is
19 able to employ counsel or at public expense if he or she
20 is unable to employ counsel, inquire of him or her
21 whether he or she is able to employ counsel and, if so,
22 whether he or she desires to employ counsel of his or her
23 choice or to have counsel assigned, and allow him or her
24 a reasonable time to send for his or her chosen or assigned
25 counsel. If the defendant is unable to employ counsel, the
26 court shall assign counsel to defend him or her. If the
27 defendant is able to employ counsel and either refuses to
28 employ counsel or appears without counsel after having
29 had a reasonable time to employ counsel, the court shall
30 assign counsel.

31 The court shall at the first opportunity inform the
32 defendant's trial counsel, whether retained by the
33 defendant or court-appointed, of the additional duties
34 imposed upon trial counsel in any capital case as set forth
35 in paragraph (1) of subdivision (b) of Section 1240.1.

36 (c) In order to assist the court in determining whether
37 a defendant is able to employ counsel in any case, the
38 court may require a defendant to file a financial
39 statement or other financial information under penalty of
40 perjury with the court or, in its discretion, order a

1 defendant to appear before a county officer designated
2 by the court to make an inquiry into the ability of the
3 defendant to employ his or her own counsel. If a county
4 officer is designated, the county officer shall provide to
5 the court a written recommendation and the reason or
6 reasons in support of the recommendation. The
7 determination by the court shall be made on the record.
8 Except as provided in Section 1214, the financial
9 statement or other financial information obtained from
10 the defendant shall be confidential and privileged and
11 shall not be admissible in evidence in any criminal
12 proceeding except the prosecution of an alleged offense
13 of perjury based upon false material contained in the
14 financial statement. The financial statement shall be
15 made available to the prosecution only for purposes of
16 investigation of an alleged offense of perjury based upon
17 false material contained in the financial statement at the
18 conclusion of the proceedings for which the financial
19 statement was required to be submitted. The financial
20 statement and other financial information obtained from
21 the defendant shall not be confidential and privileged in
22 a proceeding under Section 987.8.

23 (d) In a capital case, the court may appoint an
24 additional attorney as a cocounsel upon a written request
25 of the first attorney appointed. The request shall be
26 supported by an affidavit of the first attorney setting forth
27 in detail the reasons why a second attorney should be
28 appointed. Any affidavit filed with the court shall be
29 confidential and privileged. The court shall appoint a
30 second attorney when it is convinced by the reasons
31 stated in the affidavit that the appointment is necessary
32 to provide the defendant with effective representation.
33 If the request is denied, the court shall state on the record
34 its reasons for denial of the request.

35 (e) This section shall become operative on January 1,
36 2000.

37 SEC. 5. Section 1202.4 of the Penal Code is amended
38 to read:

39 1202.4. (a) (1) It is the intent of the Legislature that
40 a victim of crime who incurs any economic loss as a result



1 of the commission of a crime shall receive restitution
2 directly from any defendant convicted of that crime.

3 (2) Upon a person being convicted of any crime in the
4 State of California, the court shall order the defendant to
5 pay a fine in the form of a penalty assessment in
6 accordance with Section 1464.

7 (3) The court, in addition to any other penalty
8 provided or imposed under the law, shall order the
9 defendant to pay both of the following:

10 (A) A restitution fine in accordance with subdivision
11 (b).

12 (B) Restitution to the victim or victims, if any, in
13 accordance with subdivision (f), which shall be
14 enforceable as if the order were a civil judgment pursuant
15 to Section 1214.

16 (b) In every case where a person is convicted of a
17 crime, the court shall impose a separate and additional
18 restitution fine, unless it finds compelling and
19 extraordinary reasons for not doing so, and states those
20 reasons on the record.

21 (1) The restitution fine shall be set at the discretion of
22 the court and commensurate with the seriousness of the
23 offense, but shall not be less than two hundred dollars
24 (\$200), and not more than ten thousand dollars (\$10,000),
25 if the person is convicted of a felony, and shall not be less
26 than one hundred dollars (\$100), and not more than one
27 thousand dollars (\$1,000), if the person is convicted of a
28 misdemeanor.

29 (2) In setting a felony restitution fine, the court may
30 determine the amount of the fine as the product of two
31 hundred dollars (\$200) multiplied by the number of years
32 of imprisonment the defendant is ordered to serve,
33 multiplied by the number of felony counts of which the
34 defendant is convicted.

35 (c) The court shall impose the restitution fine unless it
36 finds compelling and extraordinary reasons for not doing
37 so, and states those reasons on the record. A defendant's
38 inability to pay shall not be considered a compelling and
39 extraordinary reason not to impose a restitution fine.
40 Inability to pay may be considered only in increasing the



1 amount of the restitution fine in excess of the
2 two-hundred-dollar (\$200) or one-hundred-dollar (\$100)
3 minimum.

4 (d) In setting the amount of the fine pursuant to
5 subdivision (b) in excess of the two-hundred-dollar
6 (\$200) or one-hundred-dollar (\$100) minimum, the court
7 shall consider any relevant factors including, but not
8 limited to, the defendant's inability to pay, the seriousness
9 and gravity of the offense and the circumstances of its
10 commission, any economic gain derived by the defendant
11 as a result of the crime, the extent to which any other
12 person suffered any losses as a result of the crime, and the
13 number of victims involved in the crime. Those losses
14 may include pecuniary losses to the victim or his or her
15 dependents as well as intangible losses, such as
16 psychological harm caused by the crime. Consideration of
17 a defendant's inability to pay may include his or her
18 future earning capacity. A defendant shall bear the
19 burden of demonstrating his or her inability to pay.
20 Express findings by the court as to the factors bearing on
21 the amount of the fine shall not be required. A separate
22 hearing for the fine shall not be required.

23 (e) The restitution fine shall not be subject to penalty
24 assessments as provided in Section 1464, and shall be
25 deposited in the Restitution Fund in the State Treasury.

26 (f) In every case in which a victim has suffered
27 economic loss as a result of the defendant's conduct, the
28 court shall require that the defendant make restitution to
29 the victim or victims in an amount established by court
30 order, based on the amount of loss claimed by the victim
31 or victims or any other showing to the court. If the
32 amount of loss cannot be ascertained at the time of
33 sentencing, the restitution order shall include a provision
34 that the amount shall be determined at the direction of
35 the court. The court shall order full restitution unless it
36 finds compelling and extraordinary reasons for not doing
37 so, and states them on the record.

38 (1) The defendant has the right to a hearing before a
39 judge to dispute the determination of the amount of
40 restitution. The court may modify the amount, on its own



1 motion or on the motion of the district attorney, the
2 victim or victims, or the defendant. If a motion is made
3 for modification of a restitution order, the victim shall be
4 notified of that motion at least 10 days prior to the
5 proceeding held to decide the motion.

6 (2) Determination of the amount of restitution
7 ordered pursuant to this subdivision shall not be affected
8 by the indemnification or subrogation rights of any third
9 party. Restitution payments made pursuant to this
10 subdivision shall be made to the Restitution Fund to the
11 extent that the victim, as defined in subdivision (k), has
12 received assistance pursuant to Article 1 (commencing
13 with Section 13959) of Chapter 5 of Part 4 of Division 3 of
14 Title 2 of the Government Code.

15 (3) To the extent possible, the restitution order shall
16 be prepared by the sentencing court, shall identify each
17 victim and each loss to which it pertains, and shall be of
18 a dollar amount that is sufficient to fully reimburse the
19 victim or victims for every determined economic loss
20 incurred as the result of the defendant's criminal
21 conduct, including, but not limited to, all of the following:

22 (A) Full or partial payment for the value of stolen or
23 damaged property. The value of stolen or damaged
24 property shall be the replacement cost of like property,
25 or the actual cost of repairing the property when repair
26 is possible.

27 (B) Medical expenses.

28 (C) Wages or profits lost due to injury incurred by the
29 victim, and if the victim is a minor, wages or profits lost
30 by the minor's parent, parents, guardian, or guardians,
31 while caring for the injured minor.

32 (D) Wages or profits lost by the victim, and if the
33 victim is a minor, wages or profits lost by the minor's
34 parent, parents, guardian, or guardians, due to time spent
35 as a witness or in assisting the police or prosecution.

36 (E) Noneconomic losses, including, but not limited to,
37 psychological harm, for felony violations of Section 288.

38 (F) Interest, at the rate of 10 percent per annum, that
39 accrues as of the date of sentencing or loss, as determined
40 by the court.



1 (G) Actual and reasonable attorney's fees and other
2 costs of collection accrued by a private entity on behalf of
3 the victim.

4 (g) The court shall order full restitution unless it finds
5 compelling and extraordinary reasons for not doing so,
6 and states those reasons on the record. A defendant's
7 inability to pay shall not be considered a compelling and
8 extraordinary reason not to impose a restitution order,
9 nor shall inability to pay be a consideration in
10 determining the amount of a restitution order.

11 (h) The district attorney may request an order of
12 examination pursuant to the procedures specified in
13 Article 2 (commencing with Section 708.110) of Chapter
14 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
15 Procedure, in order to determine the defendant's
16 financial assets for purposes of collecting on the
17 restitution order.

18 (i) A restitution order imposed pursuant to subdivision
19 (f) shall be enforceable as if the order were a civil
20 judgment, pursuant to Section 1214.

21 (j) The making of a restitution order pursuant to
22 subdivision (f) shall not affect the right of a victim to
23 recovery from the Restitution Fund as otherwise
24 provided by law, except to the extent that restitution is
25 actually collected pursuant to the order. Restitution
26 collected pursuant to this subdivision shall be credited to
27 any other judgments for the same losses obtained against
28 the defendant arising out of the crime for which the
29 defendant was convicted.

30 (k) For purposes of this section, "victim" shall include
31 the immediate surviving family of the actual victim.
32 "Victim" shall also include any corporation, business
33 trust, estate, trust, partnership, association, joint venture,
34 government, governmental subdivision, agency, or
35 instrumentality, or any other legal or commercial entity
36 when that entity is a direct victim of a crime.

37 (l) At its discretion, the board of supervisors of any
38 county may impose a fee to cover the actual
39 administrative cost of collecting the restitution fine, not
40 to exceed 10 percent of the amount ordered to be paid,



1 to be added to the restitution fine and included in the
2 order of the court, the proceeds of which shall be
3 deposited in the general fund of the county.

4 (m) In every case in which the defendant is granted
5 probation, the court shall make the payment of
6 restitution fines and orders imposed pursuant to this
7 section a condition of probation. Any portion of a
8 restitution order that remains unsatisfied after a
9 defendant is no longer on probation shall continue to be
10 enforceable by a victim pursuant to Section 1214 until the
11 obligation is satisfied.

12 (n) If the court finds and states on the record
13 compelling and extraordinary reasons why a restitution
14 fine or full restitution order should not be required, the
15 court shall order, as a condition of probation, that the
16 defendant perform specified community service, unless
17 it finds and states on the record compelling and
18 extraordinary reasons not to require community service
19 in addition to the finding that restitution should not be
20 required. Upon revocation of probation, the court shall
21 impose restitution pursuant to this section.

22 (o) The provisions of Section 13966.01 of the
23 Government Code shall apply to restitution imposed
24 pursuant to this section.

25 *(p) This section shall remain in effect only until*
26 *January 1, 2000, and as of that date is repealed, unless a*
27 *later enacted statute, that is enacted before January 1,*
28 *2000, deletes or extends that date.*

29 *SEC. 6. Section 1202.4 is added to the Penal Code, to*
30 *read:*

31 1202.4. (a) (1) It is the intent of the Legislature that
32 a victim of crime who incurs any economic loss as a result
33 of the commission of a crime shall receive restitution
34 directly from any defendant convicted of that crime.

35 (2) Upon a person being convicted of any crime in the
36 State of California, the court shall order the defendant to
37 pay a fine in the form of a penalty assessment in
38 accordance with Section 1464.



1 (3) The court, in addition to any other penalty
2 provided or imposed under the law, shall order the
3 defendant to pay both of the following:

4 (A) A restitution fine in accordance with subdivision
5 (b).

6 (B) Restitution to the victim or victims, if any, in
7 accordance with subdivision (f), which shall be
8 enforceable as if the order were a civil judgment pursuant
9 to Section 1214.

10 (b) In every case where a person is convicted of a
11 crime, the court shall impose a separate and additional
12 restitution fine, unless it finds compelling and
13 extraordinary reasons for not doing so, and states those
14 reasons on the record.

15 (1) The restitution fine shall be set at the discretion of
16 the court and commensurate with the seriousness of the
17 offense, but shall not be less than two hundred dollars
18 (\$200), and not more than ten thousand dollars (\$10,000),
19 if the person is convicted of a felony, and shall not be less
20 than one hundred dollars (\$100), and not more than one
21 thousand dollars (\$1,000), if the person is convicted of a
22 misdemeanor.

23 (2) In setting a felony restitution fine, the court may
24 determine the amount of the fine as the product of two
25 hundred dollars (\$200) multiplied by the number of years
26 of imprisonment the defendant is ordered to serve,
27 multiplied by the number of felony counts of which the
28 defendant is convicted.

29 (c) The court shall impose the restitution fine unless it
30 finds compelling and extraordinary reasons for not doing
31 so, and states those reasons on the record. A defendant's
32 inability to pay shall not be considered a compelling and
33 extraordinary reason not to impose a restitution fine.
34 Inability to pay may be considered only in increasing the
35 amount of the restitution fine in excess of the
36 two-hundred-dollar (\$200) or one-hundred-dollar (\$100)
37 minimum.

38 (d) In setting the amount of the fine pursuant to
39 subdivision (b) in excess of the two-hundred-dollar
40 (\$200) or one-hundred-dollar (\$100) minimum, the court



1 shall consider any relevant factors including, but not
2 limited to, the defendant's inability to pay, the seriousness
3 and gravity of the offense and the circumstances of its
4 commission, any economic gain derived by the defendant
5 as a result of the crime, the extent to which any other
6 person suffered any losses as a result of the crime, and the
7 number of victims involved in the crime. Those losses
8 may include pecuniary losses to the victim or his or her
9 dependents as well as intangible losses, such as
10 psychological harm caused by the crime. Consideration of
11 a defendant's inability to pay may include his or her
12 future earning capacity. A defendant shall bear the
13 burden of demonstrating his or her inability to pay.
14 Express findings by the court as to the factors bearing on
15 the amount of the fine shall not be required. A separate
16 hearing for the fine shall not be required.

17 (e) The restitution fine shall not be subject to penalty
18 assessments as provided in Section 1464, and shall be
19 deposited in the Restitution Fund in the State Treasury.

20 (f) In every case in which a victim has suffered
21 economic loss as a result of the defendant's conduct, the
22 court shall require that the defendant make restitution to
23 the victim or victims in an amount established by court
24 order, based on the amount of loss claimed by the victim
25 or victims or any other showing to the court. If the
26 amount of loss cannot be ascertained at the time of
27 sentencing, the restitution order shall include a provision
28 that the amount shall be determined at the direction of
29 the court. The court shall order full restitution unless it
30 finds compelling and extraordinary reasons for not doing
31 so, and states them on the record.

32 (1) The defendant has the right to a hearing before a
33 judge to dispute the determination of the amount of
34 restitution. The court may modify the amount, on its own
35 motion or on the motion of the district attorney, the
36 victim or victims, or the defendant. If a motion is made
37 for modification of a restitution order, the victim shall be
38 notified of that motion at least 10 days prior to the
39 proceeding held to decide the motion.

1 (2) Determination of the amount of restitution
2 ordered pursuant to this subdivision shall not be affected
3 by the indemnification or subrogation rights of any third
4 party. Restitution payments made pursuant to this
5 subdivision shall be made to the Restitution Fund to the
6 extent that the victim, as defined in subdivision (k), has
7 received assistance pursuant to Article 1 (commencing
8 with Section 13959) of Chapter 5 of Part 4 of Division 3 of
9 Title 2 of the Government Code.

10 (3) To the extent possible, the restitution order shall
11 be prepared by the sentencing court, shall identify each
12 victim and each loss to which it pertains, and shall be of
13 a dollar amount that is sufficient to fully reimburse the
14 victim or victims for every determined economic loss
15 incurred as the result of the defendant's criminal
16 conduct, including, but not limited to, all of the following:

17 (A) Full or partial payment for the value of stolen or
18 damaged property. The value of stolen or damaged
19 property shall be the replacement cost of like property,
20 or the actual cost of repairing the property when repair
21 is possible.

22 (B) Medical expenses.

23 (C) Wages or profits lost due to injury incurred by the
24 victim, and if the victim is a minor, wages or profits lost
25 by the minor's parent, parents, guardian, or guardians,
26 while caring for the injured minor.

27 (D) Wages or profits lost by the victim, and if the
28 victim is a minor, wages or profits lost by the minor's
29 parent, parents, guardian, or guardians, due to time spent
30 as a witness or in assisting the police or prosecution.

31 (E) Noneconomic losses, including, but not limited to,
32 psychological harm, for felony violations of Section 288.

33 (F) Interest, at the rate of 10 percent per annum, that
34 accrues as of the date of sentencing or loss, as determined
35 by the court.

36 (G) Actual and reasonable attorney's fees and other
37 costs of collection accrued by a private entity on behalf of
38 the victim.

39 ~~(4) Prior to issuing any order pursuant to this~~
40 ~~subdivision, the court shall require the defendant to~~



1 (4) *Except as provided in paragraph (5), in any case*
2 *in which an order is entered pursuant to this subdivision,*
3 *the defendant shall prepare and file a disclosure*
4 *identifying all assets, income, and liabilities in which the*
5 *defendant held or controlled a present or future interest*
6 *as of the date of the defendant's arrest for the crime for*
7 *which restitution may be ordered. This disclosure shall be*
8 *available to the victim pursuant to Section 1214, and any*
9 *use the court may make of the disclosure shall be subject*
10 *to the restrictions of subdivision (g). The disclosure shall*
11 *be signed by the defendant upon a form approved or*
12 *adopted by the Judicial Council for the purpose of*
13 *facilitating the disclosure. Any defendant who willfully*
14 *states as true any material matter that he or she knows to*
15 *be false on the disclosure required by this subdivision is*
16 *guilty of a misdemeanor.*

17 ~~(5) Unless otherwise directed by the court~~ A
18 *defendant who fails to file the financial disclosure*
19 *required in paragraph (4), but who has filed a financial*
20 *affidavit or financial information pursuant to subdivision*
21 *(c) of Section 987, shall be deemed to have waived the*
22 *confidentiality of that affidavit or financial information as*
23 *to a victim in whose favor the order of restitution is*
24 *entered pursuant to subdivision (f). The affidavit or*
25 *information shall serve in lieu of the financial disclosure*
26 *required in paragraph (4), and paragraphs (6), (7), (8),*
27 *and (9) shall not apply.*

28 (6) *Except as provided in paragraph (5), the*
29 *defendant shall file the disclosure with the clerk of the*
30 *court no later than the date set for the defendant's*
31 *sentencing, unless otherwise directed by the court. The*
32 *disclosure may be inspected or copied as provided by*
33 *subdivision (b), (c), or (d) of Section 1203.05.*

34 ~~(6)~~

35 (7) *In its discretion, the court may relieve the*
36 *defendant of the duty under paragraph ~~(5)~~ (6) of filing*
37 *with the clerk by requiring the defendant's disclosure be*
38 *submitted as an attachment to, and be available to, those*
39 *authorized to receive the following:*



1 (A) Any report submitted pursuant to subparagraph
2 (C) of paragraph (2) of subdivision (b) of Section 1203 or
3 subdivision (g) of Section 1203.

4 (B) Any stipulation submitted pursuant to paragraph
5 (4) of subdivision (b) of Section 1203.

6 ~~(C) Any report pursuant to subdivision (h) of Section~~
7 ~~1203.~~

8 ~~(D) Any~~

9 (C) Any report by the probation officer, or any
10 information submitted by the defendant applying for a
11 conditional sentence pursuant to subdivision (d) of
12 Section 1203.

13 ~~(7) A defendant required to make the disclosure~~
14 ~~pursuant to paragraph (4) shall not be admitted to~~
15 ~~probation or be conditionally sentenced under Section~~
16 ~~1203, unless the defendant has made the required~~
17 ~~disclosure. The court shall consider the failure to make~~
18 ~~the required disclosure a circumstance in aggravation of~~
19 ~~the crime in imposing a term under subdivision (b) of~~
20 ~~Section 1170.~~

21 ~~(8) Upon a defendant's failure or refusal to make the~~
22 ~~required disclosure pursuant to paragraph (4), the court~~
23 ~~shall not delay entry of an order of restitution. The court~~
24 ~~shall require the defendant to be examined by the district~~
25 ~~attorney pursuant to subdivision (h).~~

26 (8) *The court may consider a defendant's*
27 *unreasonable failure to make a complete disclosure*
28 *pursuant to paragraph (4) as any of the following:*

29 (A) *A circumstance in aggravation of the crime in*
30 *imposing a term under subdivision (b) of Section 1170.*

31 (B) *A factor indicating that the interests of justice*
32 *would not be served by admitting the defendant to*
33 *probation under Section 1203.*

34 (C) *A factor indicating that the interests of justice*
35 *would not be served by conditionally sentencing the*
36 *defendant under Section 1203.*

37 (D) *A factor indicating that the interests of justice*
38 *would not be served by imposing less than the maximum*
39 *fine and sentence fixed by law for the case.*



1 (9) A defendant's failure or refusal to make the
2 required disclosure pursuant to paragraph (4) shall not
3 delay entry of an order of restitution or pronouncement
4 of sentence. In appropriate cases, the court may do any
5 of the following:

6 (A) Require the defendant to be examined by the
7 district attorney pursuant to subdivision (h).

8 (B) If sentencing the defendant under Section 1170,
9 provide that the victim shall receive a copy of the portion
10 of the probation report filed pursuant to Section 1203.10
11 concerning the defendant's employment, occupation,
12 finances, and liabilities.

13 (C) If sentencing the defendant under Section 1203,
14 set a date and place for submission of the disclosure
15 required by paragraph (4) as a condition of probation or
16 suspended sentence.

17 (g) The court shall order full restitution unless it finds
18 compelling and extraordinary reasons for not doing so,
19 and states those reasons on the record. A defendant's
20 inability to pay shall not be considered a compelling and
21 extraordinary reason not to impose a restitution order,
22 nor shall inability to pay be a consideration in
23 determining the amount of a restitution order.

24 (h) The district attorney may request an order of
25 examination pursuant to the procedures specified in
26 Article 2 (commencing with Section 708.110) of Chapter
27 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
28 Procedure, in order to determine the defendant's
29 financial assets for purposes of collecting on the
30 restitution order.

31 (i) A restitution order imposed pursuant to subdivision
32 (f) shall be enforceable as if the order were a civil
33 judgment, pursuant to Section 1214.

34 (j) The making of a restitution order pursuant to
35 subdivision (f) shall not affect the right of a victim to
36 recovery from the Restitution Fund as otherwise
37 provided by law, except to the extent that restitution is
38 actually collected pursuant to the order. Restitution
39 collected pursuant to this subdivision shall be credited to
40 any other judgments for the same losses obtained against



1 the defendant arising out of the crime for which the
2 defendant was convicted.

3 (k) For purposes of this section, “victim” shall include
4 the immediate surviving family of the actual victim.
5 “Victim” shall also include any corporation, business
6 trust, estate, trust, partnership, association, joint venture,
7 government, governmental subdivision, agency, or
8 instrumentality, or any other legal or commercial entity
9 when that entity is a direct victim of a crime.

10 (l) At its discretion, the board of supervisors of any
11 county may impose a fee to cover the actual
12 administrative cost of collecting the restitution fine, not
13 to exceed 10 percent of the amount ordered to be paid,
14 to be added to the restitution fine and included in the
15 order of the court, the proceeds of which shall be
16 deposited in the general fund of the county.

17 (m) In every case in which the defendant is granted
18 probation, the court shall make the payment of
19 restitution fines and orders imposed pursuant to this
20 section a condition of probation. Any portion of a
21 restitution order that remains unsatisfied after a
22 defendant is no longer on probation shall continue to be
23 enforceable by a victim pursuant to Section 1214 until the
24 obligation is satisfied.

25 (n) If the court finds and states on the record
26 compelling and extraordinary reasons why a restitution
27 fine or full restitution order should not be required, the
28 court shall order, as a condition of probation, that the
29 defendant perform specified community service, unless
30 it finds and states on the record compelling and
31 extraordinary reasons not to require community service
32 in addition to the finding that restitution should not be
33 required. Upon revocation of probation, the court shall
34 impose restitution pursuant to this section.

35 (o) The provisions of Section 13966.01 of the
36 Government Code shall apply to restitution imposed
37 pursuant to this section.

38 (p) (1) *This section shall become operative on*
39 *January 1, 2000, except when all of the following apply:*



1 (A) A majority of judges of a court apply to the Judicial
2 Council for an extension.

3 (B) The judicial application described in paragraph
4 (1) documents the need for time to adjust restitution
5 procedures and practices, as well as to facilitate judicial
6 education and training in direct restitution to victims
7 under subdivision (f).

8 (C) The Judicial Council grants the extension upon
9 finding good cause.

10 (2) Upon the grant of an extension pursuant to the
11 application of a court under this subdivision, the
12 provisions of former Section 1214 shall continue to apply
13 with respect to that court. The extension may be for any
14 period of time set by the Judicial Council, but shall not
15 exceed January 1, 2002, in any case.

16 ~~SEC. 3. Section 1214 of the Penal Code is amended to~~
17 ~~read:~~

18 *SEC. 7. Section 1214 of the Penal Code is amended to*
19 *read:*

20 1214. (a) If the judgment is for a fine, including a
21 restitution fine ordered pursuant to Section 1202.4 or
22 Section 1203.04, as operative on or before August 2, 1995,
23 or Section 13967 of the Government Code, as operative on
24 or before September 28, 1994, with or without
25 imprisonment, the judgment may be enforced in the
26 manner provided for the enforcement of money
27 judgments generally.

28 (b) In any case in which a defendant is ordered to pay
29 restitution, the order to pay restitution (1) is deemed a
30 money judgment if the defendant was informed of his or
31 her right to have a judicial determination of the amount
32 and was provided with a hearing, waived a hearing, or
33 stipulated to the amount of the restitution ordered, and
34 (2) shall be fully enforceable by a victim as if the
35 restitution order were a civil judgment, and enforceable
36 in the same manner as is provided for the enforcement of
37 any other money judgment. Upon the victim's request,
38 the court shall provide the victim in whose favor the
39 order of restitution is entered with a certified copy of that
40 order. In addition, upon request, the court shall provide



1 the State Board of Control with a certified copy of any
2 order imposing a restitution fine or order. A victim shall
3 have access to all resources available under the law to
4 enforce the restitution order, including, but not limited
5 to, access to the defendant's financial records, use of wage
6 garnishment and lien procedures, information regarding
7 the defendant's assets, and the ability to apply for
8 restitution from any fund established for the purpose of
9 compensating victims in civil cases. Any portion of a
10 restitution order that remains unsatisfied after a
11 defendant is no longer on probation or parole is
12 enforceable by the victim pursuant to this section.
13 Victims and the State Board of Control shall inform the
14 court whenever an order to pay restitution is satisfied.

15 (c) Chapter 3 (commencing with Section 683.010) of
16 Division 1 of Title 9 of Part 2 of the Code of Civil
17 Procedure shall not apply to a judgment for any fine or
18 restitution ordered pursuant to Section 1202.4 or Section
19 1203.04, as operative on or before August 2, 1995, or
20 Section 13967 of the Government Code, as operative on
21 or before September 28, 1994.

22 (d) *This section shall remain in effect only until*
23 *January 1, 2000, and as of that date is repealed, unless a*
24 *later enacted statute, that is enacted before January 1,*
25 *2000, deletes or extends that date.*

26 SEC. 8. *Section 1214 is added to the Penal Code, to*
27 *read:*

28 1214. (a) If the judgment is for a fine, including a
29 restitution fine ordered pursuant to Section 1202.4 or
30 Section 1203.04 as operative on or before August 2, 1995,
31 or Section 13967 of the Government Code, as operative on
32 or before September 28, 1994, with or without
33 imprisonment, the judgment may be enforced in the
34 manner provided for the enforcement of money
35 judgments generally.

36 (b) In any case in which a defendant is ordered to pay
37 restitution, the order to pay restitution (1) is deemed a
38 money judgment if the defendant was informed of his or
39 her right to have a judicial determination of the amount
40 and was provided with a hearing, waived a hearing, or



1 stipulated to the amount of the restitution ordered, and
2 (2) shall be fully enforceable by a victim as if the
3 restitution order were a civil judgment, and enforceable
4 in the same manner as is provided for the enforcement of
5 any other money judgment. Upon the victim's request,
6 the court shall provide the victim in whose favor the
7 order of restitution is entered with a certified copy of that
8 order and a copy of the defendant's disclosure pursuant
9 to paragraph (4) of subdivision (f) of Section 1202.4, *or*
10 *affidavit or information pursuant to paragraph (5) of*
11 *subdivision (f) of Section 1202.4*, or report pursuant to
12 paragraph ~~(6)~~ (7) of subdivision (f) of Section 1202.4. *The*
13 *court also shall provide this information to the district*
14 *attorney upon request.* In addition, upon request, the
15 court shall provide the State Board of Control with a
16 certified copy of any order imposing a restitution fine or
17 order and a copy of the defendant's disclosure pursuant
18 to paragraph (4) of subdivision (f) of Section 1202.4, *or*
19 *affidavit or information pursuant to paragraph (5) of*
20 *subdivision (f) of Section 1202.4*, or report pursuant to
21 paragraph ~~(6)~~ (7) of subdivision (f) of Section 1202.4. A
22 victim shall have access to all resources available under
23 the law to enforce the restitution order, including, but not
24 limited to, access to the defendant's financial records, use
25 of wage garnishment and lien procedures, information
26 regarding the defendant's assets, and the ability to apply
27 for restitution from any fund established for the purpose
28 of compensating victims in civil cases. Any portion of a
29 restitution order that remains unsatisfied after a
30 defendant is no longer on probation or parole is
31 enforceable by the victim pursuant to this section.
32 Victims and the State Board of Control shall inform the
33 court whenever an order to pay restitution is satisfied.

34 (c) Chapter 3 (commencing with Section 683.010) of
35 Division 1 of Title 9 of Part 2 of the Code of Civil
36 Procedure shall not apply to a judgment for any fine or
37 restitution ordered pursuant to Section 1202.4 or Section
38 1203.04 as operative on or before August 2, 1995, or
39 Section 13967 of the Government Code, as operative on
40 or before September 28, 1994.



1 (d) (1) This section shall become operative on
2 January 1, 2000, except when all of the following apply:

3 (A) A majority of judges of a court apply to the Judicial
4 Council for an extension.

5 (B) The judicial application described in paragraph
6 (1) documents the need for time to adjust restitution
7 procedures and practices, as well as to facilitate judicial
8 education and training in direct restitution to victims
9 under subdivision (f).

10 (C) The Judicial Council grants the extension upon
11 finding good cause.

12 (2) Upon the grant of an extension pursuant to the
13 application of a court under this subdivision, the
14 provisions of former Section 1202.4 shall continue to apply
15 with respect to that court. The extension may be for any
16 period of time set by the Judicial Council, but shall not
17 exceed January 1, 2002, in any case.

18 ~~SEC. 4.~~

19 SEC. 9. Section 11177.2 of the Penal Code is amended
20 to read:

21 11177.2. (a) No parolee or inmate may be released on
22 parole to reside in any other receiving state if the parolee
23 or inmate is subject to an unsatisfied order of restitution
24 to a victim or a restitution fine within the sending state.

25 (b) A parolee or inmate may be granted an exception
26 to the prohibition in subdivision (a) if the parolee or
27 inmate posts a bond for the amount of the restitution
28 order.

29 (c) A parolee or inmate may petition the court for a
30 hearing to determine whether, in the interests of justice,
31 the prohibition against leaving the state should be
32 waived. This section shall not be construed to allow the
33 reduction or waiver of a restitution order or fine.

34 ~~SEC. 5.~~

35 SEC. 10. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty



1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government
6 Code, unless otherwise specified, the provisions of this act
7 shall become operative on the same date that the act
8 takes effect pursuant to the California Constitution.

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